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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PAMELA KELLY,

Plaintiff,

v.

MICHAEL J. ASTRUE,  
COMMISSIONER OF THE SOCIAL  
SECURITY ADMINISTRATION,

Defendant.

Case No. CV 06-02671 AN

ORDER REMANDNG DECISION  
OF COMMISSIONER

The Court now rules as follows with respect to the three disputed issues in the Joint Stipulation (“JS”).<sup>1/</sup>

By way of the first issue, Plaintiff generally contends a reversal is warranted because the Administrative Law Judge (“ALJ”) finding that Plaintiff’s shoulder impairments only limited her from overhead reaching conflicts with the opinion expressed by Dr. Conaty, an examining orthopedic surgeon, who found, among other things, that Plaintiff’s shoulder impairments limited her from “reaching in all directions, particularly at or above shoulder level[.]” [JS at 5:3-14; AR at 293.] Plaintiff further

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<sup>1/</sup> Both parties have consented to proceed before the undersigned Magistrate Judge. In accordance with the Court’s Case Management Order, the parties have filed the JS and seek a dispositive order regarding the disputed issues set forth in the JS. The Court’s decision is based upon the pleadings, the Administrative Record (“AR”), and the JS.

1 argues the ALJ did not give specific and legitimate reasons for rejecting Dr. Conaty's  
2 aforementioned opinion, which was also consistent with the March 8, 2004 opinion  
3 expressed by Dr. Danzig, another examining physician, who opined that, absent surgery,  
4 Plaintiff's left shoulder pain would preclude her from repetitive work at or above  
5 shoulder level. [JS at 7:4-17.]

6 A person with an overhead reaching impairment is not as impaired as someone  
7 whose is unable to reach in all directions, particularly at or above the shoulder level.  
8 Consequently, the ALJ's finding that Plaintiff's shoulder impairments only restricted her  
9 from overhead reaching conflicts with Dr. Conaty's more restrictive opinion. The ALJ's  
10 decision reflects that she considered some, but not all, of Dr. Conaty's opinion, but never  
11 gave a specific and legitimate reason for rejecting Dr. Conaty's aforementioned opinion.  
12 To the contrary, the ALJ's decision reflects that she erroneously found Dr. Conaty's  
13 opinion supported her residual functional capacity assessment that Plaintiff is only  
14 limited to overhead reaching. [AR at 25.] Accordingly, in addition to failing to give a  
15 specific and legitimate reason for rejecting Dr. Conaty's opinion, the ALJ's conclusion  
16 that Dr. Conaty's opinion supports her finding is not supported by substantial evidence  
17 in the record.

18 The ALJ's failure to give a proper reason for rejecting Dr. Conaty's opinion about  
19 Plaintiff's reaching impairment also invalidates her finding that Plaintiff could perform  
20 the three jobs identified by the vocational expert because the ALJ's hypothetical question  
21 did not account for Plaintiff's full reaching limitations.

22 Based upon the foregoing, the Court finds no reason to discuss the second and third  
23 disputed issues.

24 The only remaining issue is whether to remand for further proceedings pursuant  
25 to Sentence Four of 42 U.S.C. § 405(g) or the full payment of benefits. The Court finds  
26 a Sentence Four remand is more appropriate because it remains to be seen whether the  
27 ALJ can provides specific and legitimate reasons for finding Plaintiff's shoulder  
28 impairments only restrict her from overhead reaching. Further, even if Plaintiff's

1 reaching impairments are as severe as Dr. Conaty opined, it is also unclear whether or not  
2 there are still significant jobs in national economy for Plaintiff to perform. This issue  
3 must be resolved by posing a proper hypothetical to the vocational expert.

4 IT IS THEREFORE ORDERED that judgment be entered reversing the  
5 Commissioner's final decision, and remanding this action to the ALJ for further  
6 proceedings not inconsistent with this Order pursuant to Sentence Four of 42 U.S.C.  
7 §405(g).

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10 DATED: September 5, 2007

ARTHUR NAKAZATO  
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ARTHUR NAKAZATO  
UNITED STATES MAGISTRATE JUDGE